

Chapter 242-02 WAC
PRACTICE AND PROCEDURE Last Update: 10/15/04WAC

ADMINISTRATION

242-02-010	Organization.
242-02-020	Function--Local deference.
242-02-030	Jurisdiction.
242-02-040	Definitions.
242-02-050	Rules.
242-02-052	Petition for rule making.
242-02-054	Petition for rule making--Consideration and disposition.
242-02-060	Computation of time.
242-02-070	Quorum.
242-02-072	Principal offices.
242-02-074	Regular meetings.
242-02-076	Annual and semiannual joint boards meetings.
242-02-080	Form and size of documents.
242-02-090	Case numbering.

PRACTICE BEFORE A BOARD

242-02-110	Appearance and practice before a board--Who may appear.
242-02-115	Authorized representatives.
242-02-120	Rules of professional conduct.
242-02-130	Ex parte communication.
242-02-140	Signing of pleadings, motions, and legal memoranda.
242-02-150	Teleconference proceeding.

APPEAL PROCEDURE

242-02-210	Petition for review--Forms--Contents.
242-02-220	Petition for review--Time for filing.
242-02-230	Petition for review--Service and filing.
242-02-240	Date of filing--Facsimile and electronic mail.
242-02-250	Notice of appearance and answer.
242-02-255	Governor certified standing.
242-02-260	Amendments to petitions for review and answers.
242-02-270	Intervention.
242-02-280	Amicus.
242-02-290	Direct review by superior court--Procedures.
242-02-292	Direct review by superior court--Agreement of the parties.
242-02-295	Board filing with superior court--Certificate of agreement.

SERVICE OF PAPERS

242-02-310	Service of papers.
242-02-320	Method of service.
242-02-330	Service of papers--When complete.
242-02-340	Proof of service--Certificate.

DISCOVERY AND SUBPOENA

242-02-410	Discovery--Limitation.
242-02-420	Subpoena--Issuance.

PROCEDURES PRIOR TO HEARING

242-02-510	Notice of hearing--Setting of time and place.
242-02-515	Consolidation and segregation of issues
242-02-520	Record.
242-02-52001	Exhibits.
242-02-52002	Documentary evidence.
242-02-521	Designation of presiding officer.

242-02-522	Presiding officer--Powers and duties.
242-02-530	Motions--Requirements.
242-02-532	Motions--Time for filing and hearing.
242-02-533	Motion to disqualify for cause.
242-02-534	Response to motions.
242-02-540	New or supplemental evidence.
242-02-550	Prehearing conference.
242-02-552	Prehearing conference--When held.
242-02-556	Prehearing conference--Failure to supply information.
242-02-558	Prehearing conference--Agreements.
242-02-560	Settlement extensions--Continuances.
242-02-570	Briefs.
242-02-580	Stipulation to the facts.
242-02-582	Waiver of parties' appearance.

HEARING PROCEDURE

242-02-610	Hearing--Testimony under oath--Interpreters.
242-02-612	Hearing--Interpreters.
242-02-620	Hearing--Reporting--Recording--Recording devices.
242-02-630	Presumption of validity.
242-02-632	Burden of proof.
242-02-634	Standard of proof.
242-02-640	Hearing--Procedures at hearing.
242-02-650	Rules of evidence--Admissibility criteria.
242-02-660	Official notice--Matters of law.
242-02-670	Official notice--Material facts.
242-02-680	Hearings--Board questions.

DISPOSITION OF CASES PRIOR TO HEARING

242-02-710	Failure to attend--Default or dismissal--Setting aside.
242-02-720	Dismissal of action.

DISPOSITION OF PETITIONS FOR REVIEW AFTER HEARING

242-02-810	Presentation of post hearing matters.
242-02-830	Final decision and order--Basis.
242-02-831	Final decision and order--Compliance, noncompliance, invalidity.
242-02-832	Reconsideration.
242-02-833	Invalidity--Hearing pursuant to motion to clarify, modify or rescind.
242-02-834	Publication of final decision and orders.
242-02-880	Transcripts.
242-02-890	Determination of noncompliance--Compliance schedule.
242-02-891	Compliance--Notice of hearing.
242-02-892	Intent to participate in compliance hearings.
242-02-893	Compliance--Hearing.
242-02-894	Compliance--Hearing pursuant to motion--Rescinding invalidity.
242-02-896	Continued noncompliance--Recommendation to the governor.
242-02-898	Appeals of a board's final decision.
242-02-899	Record on review
242-02-910	Petitions for declaratory ruling.
242-02-920	Declaratory ruling--Notice to other persons.
242-02-930	Declaratory ruling--Disposition of petition.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

242-02-430	Subpoena--Form. [Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-430, filed 10/15/92, effective 10/15/92.] Repealed by 98-01-144, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(7).
242-02-440	Subpoena--Service. [Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-440, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-440, filed 10/15/92, effective 10/15/92.] Repealed by 98-01-144, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(7).
242-02-450	Subpoena--Proof of service. [Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-450, filed 10/15/92, effective 10/15/92.] Repealed by 98-01-144, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(7).
242-02-460	Subpoena--Quash or modification. [Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-460, filed 10/15/92,

effective 10/15/92.] Repealed by 98-01-144, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(7).

242-02-470 Subpoena--Geographical scope. [Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-470, filed 10/15/92, effective 10/15/92.] Repealed by 98-01-144, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(7).

242-02-554 Prehearing conference--Documentary evidence. [Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-554, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-554, filed 10/15/92, effective 10/15/92.] Repealed by 97-04-008, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(7).

242-02-820 Disposition of petition for review. [Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-820, filed 10/15/92, effective 10/15/92.] Repealed by 97-04-008, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(7).

242-02-840 Disposition of petition for review--Initial decision and order. [Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-840, filed 10/15/92, effective 10/15/92.] Repealed by 97-04-008, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(7).

242-02-850 Disposition of initial decision--Exceptions. [Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-850, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-850, filed 10/15/92, effective 10/15/92.] Repealed by 97-04-008, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(7).

242-02-860 Disposition of petition for review--Finality of initial decision and order. [Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-860, filed 10/15/92, effective 10/15/92.] Repealed by 97-04-008, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(7).

242-02-870 Disposition of petition for review--Final decision and order--Exceptions filed. [Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-870, filed 10/15/92, effective 10/15/92.] Repealed by 97-04-008, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(7).

242-02-892 Appeals of a board's final decision. [Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-892, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-892, filed 10/15/92, effective 10/15/92.] Repealed by 98-01-144, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(7).

ADMINISTRATION

WAC 242-02-010 Organization. Three growth management hearings boards were established pursuant to chapter 36.70A RCW. Each board is an independent quasi-judicial agency of the state of Washington with three members appointed by the governor who are qualified by experience or training in matters pertaining to land use planning. These rules were developed, adopted, and amended jointly by all three boards pursuant to RCW 36.70A.270(7). They should be read in conjunction with the act and the Administrative Procedure Act, chapter 34.05 RCW.

[Statutory Authority: RCW 36.70A.270(7). 03-15-047, § 242-02-010, filed 7/11/03, effective 8/11/03; 97-04-008, § 242-02-010, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-010, filed 11/22/94, effective 12/23/94; 92-21-034, § 242-02-010, filed 10/15/92, effective 10/15/92.]

WAC 242-02-020 Function--Local deference. (1) The function of a board is to make informed decisions on appeals arising from implementation of the Growth Management Act in a clear, consistent, timely, and impartial manner that recognizes regional diversity.

(2) The legislature requires growth management planning to occur in compliance with the goals and requirements of the act. The responsibility for managing local growth and shaping a
WAC (3/7/06 7:55 PM) [3]

county's or city's future rests with the local community. The boards will grant deference to counties and cities in how they plan for and manage growth.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-020, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-020, filed 10/15/92, effective 10/15/92.]

WAC 242-02-030 Jurisdiction. This section is intended to be general and informational only, and failure to list matters over which a board has jurisdiction at law shall not constitute any waiver of or withdrawal from such jurisdiction.

(1) Geographic jurisdiction. Each board shall hear only those matters pertaining to the cities and counties located within its jurisdictional boundaries. The boundaries are as follows:

(a) The Eastern Washington board includes all counties and the cities now or subsequently located within these counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains;

(b) The Central Puget Sound board includes and is limited to King, Pierce, Snohomish and Kitsap counties, and the cities now or subsequently located within those counties; and

(c) The Western Washington board includes all counties and the cities now or subsequently located within those counties that are required or choose to plan under RCW 36.70A.040 and are located west of the crest of the Cascade mountains and are not included in the Central Puget Sound board boundaries;

(d) Skamania County, should it be required or choose to plan under RCW 36.70A.040, may elect to be included within the jurisdictional boundaries of the Western or Eastern Washington boards.

(2) Subject matter jurisdiction. Each board shall hear and determine petitions alleging that a state agency, county, or city is not in compliance with the requirements of the act, or chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to plans, development regulations, and amendments adopted under the act or chapter 90.58 RCW; or, petitions from cities or the governor relating to an adopted county-wide planning policy; or, that the twenty-year growth management planning projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

(3) Jurisdictional issues. Any party to a proceeding before a board may, by motion, challenge the jurisdiction of

that board in any petition for review. A board may, upon its own motion, raise such an issue.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-030, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-030, filed 10/15/92, effective 10/15/92.]

WAC 242-02-040 Definitions. As used in this title, the following terms shall have the following meaning:

(1) "Act" means chapter 36.70A RCW, and subsequent amendments.

(2) "Board" means the Eastern Washington, Western Washington or Central Puget Sound growth management hearings board.

(3) "Final decision" means:

(a) Any final order as provided in RCW 36.70A.300; or

(b) Any other written finding, determination or order of the board which finally determines a legal right, duty, or other legal interest of the parties in the case and which clearly states such written finding, determination or order that it is a final decision subject to appeal to superior court.

(4) "Hearing examiner" means an authorized agent of a board who has a demonstrated knowledge of land use planning and law, appointed to assist the board in the performance of its hearing function as delegated by the board as provided by the act.

(5) "Joint boards" means the three independent boards meeting or acting jointly.

(6) "Participant" means any person with standing to challenge a legislative action as set forth in RCW 36.70A.330(2).

(7) "Party" means any person named in the caption of a case before a board.

(8) "Person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit, or public or private organization or entity of any character.

(9) "Petitioner" means a person who appeals any matter or who brings a petition for rule making to the board. A petitioner is a party to a case before the board.

(10) "Presiding officer" means any member of a board, or a hearing examiner, who is assigned to conduct a conference or hearing as directed by a board. The presiding officer shall be designated pursuant to WAC 242-02-521 and have authority as provided by WAC 242-02-522.

(11) "Publication" means:

(a) For a city, the date the city publishes the ordinance or summary of the ordinance adopting a comprehensive plan, development regulations or subsequent amendment, as is required to be published, or the date the city publishes notice that the shoreline master program or amendment has been approved or disapproved by the department of ecology;

(b) For a county, the date the county publishes the notice that it has adopted a comprehensive plan, development regulations or other enactments, or subsequent amendments pursuant to RCW 36.70A.290(2), or the date the county publishes notice that the shoreline master program or amendment has been approved or disapproved by the department of ecology.

(12) "Respondent" means a person who is named as a responding party in any petition for review before a board.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-040, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-040, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-040, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-040, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-040, filed 10/15/92, effective 10/15/92.]

WAC 242-02-050 Rules. These rules shall govern the joint boards' adoption or amendment of joint rules, and all practice and procedure for hearings before a board. Where a time frame is different in these rules from those in chapter 10-08 WAC, it is because a board is required to act pursuant to the time frames set forth in the act.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-050, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-050, filed 10/15/92, effective 10/15/92.]

WAC 242-02-052 Petition for rule making. (1) Right to petition for rule making. Any person may petition the joint boards for the adoption, amendment, or repeal of any rule. Said petition shall be filed with the Western Washington board.

(2) Form of petition. The form of the petition for adoption, amendment, or repeal of any rule shall generally adhere to the following:

(a) A caption in the following form:

BEFORE THE JOINT GROWTH MANAGEMENT
HEARINGS BOARDS

WAC (3/7/06 7:55 PM) [6]

No.

In the matter of
the Petition of
(Name of Petitioner)
for Rule Making

PETITION FOR RULE MAKING

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party and whether the petitioner seeks the adoption of a new rule or rules, or amendment or repeal of an existing rule or rules. The second paragraph, in case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety. Where the petition is for repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by board rule number. The third paragraph shall set forth concisely the reasons for the proposal of the petitioner and shall contain a statement as to the interests of the petitioner and the subject matter of the rule. Additional numbered paragraphs may be used to give full explanation of petitioner's reason for the action sought.

(c) The petition shall be dated and signed by the party named in the first paragraph or by the petitioner's attorney or other authorized representative. The original and nine copies shall be filed with the appropriate board at its office.

[Statutory Authority: RCW 36.70A.270(7). 03-15-047, § 242-02-052, filed 7/11/03, effective 8/11/03; 00-09-094, § 242-02-052, filed 4/19/00, effective 5/20/00; 98-01-144, § 242-02-052, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-052, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-052, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-052, filed 10/15/92, effective 10/15/92.]

WAC 242-02-054 Petition for rule making--Consideration and disposition. (1) Each petition for the adoption, amendment, or repeal of a rule shall be considered by the joint boards, and the joint boards may, in their discretion, solicit comments or invite discussion concerning the matter prior to disposition of the petition.

(2) Consideration of petitions. All petitions shall be considered by the joint boards or representatives designated by each board, and the joint boards may, in their discretion, hold

meetings for the further consideration and discussion of the requested adoption, amendment, or repeal of any rule.

(3) Notification of disposition of petition. The joint boards or designated representatives shall notify the petitioner within a reasonable time of the disposition, if any, of the petition.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-054, filed 10/15/92, effective 10/15/92.]

WAC 242-02-060 Computation of time. The time within which any act shall be done, as provided by these rules, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, pursuant to RCW 1.16.050, and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-060, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-060, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-060, filed 10/15/92, effective 10/15/92.]

WAC 242-02-070 Quorum. (1) Joint boards. For the purpose of adopting, amending or repealing these rules, at least two members of each board must concur.

(2) Individual board. For purposes of making orders or decisions or transacting other official business, two members of a board shall constitute a quorum and may act even though one position on the board is vacant. One member or designated hearing examiner may hold hearings and take testimony. The findings of such member or hearing examiner shall not become final until approved by a majority of the board. A board member who does not attend a hearing shall review a transcript or recording of the hearing before signing the decision.

[Statutory Authority: RCW 36.70A.270(7). 03-15-047, § 242-02-070, filed 7/11/03, effective 8/11/03; 97-04-008, § 242-02-070, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-070, filed 10/15/92, effective 10/15/92.]

WAC 242-02-072 Principal offices. The principal offices of each board are as follows:

- (1) Eastern Washington Growth
Management Hearings Board
15 West Yakima Avenue, Suite 102
Yakima, Washington 98902
509-574-6960
509-574-6964 fax
e-mail: aandreas476@ew.gmhb.wa.gov
web site: www.gmhb.wa.gov
- (2) Western Washington Growth
Management Hearings Board
905 24th Way S.W. Suite B-2
P.O. Box 40953
Olympia, Washington 98504-0953
(360) 664-8966
(360) 664-8975 fax
e-mail: western@ww.gmhb.wa.gov
web site: www.gmhb.wa.gov
- (3) Central Puget Sound Growth
Management Hearings Board
900 Fourth Avenue, Suite 2470
Seattle, Washington 98164
(206) 389-2625
(206) 389-2588 fax
e-mail: central@cps.gmhb.wa.gov
web site: www.gmhb.wa.gov

[Statutory Authority: RCW 36.70A.270(7). 03-15-047, § 242-02-072, filed 7/11/03, effective 8/11/03; 98-01-144, § 242-02-072, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-072, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-072, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-072, filed 10/15/92, effective 10/15/92.]

WAC 242-02-074 Regular meetings. (1) Regular meetings of each board will be held at its principal office or designated location at the following times:

(a) Eastern Washington board - on the first Wednesday of each month at 10:00 a.m. or following any scheduled hearing on that date.

(b) Western Washington board - on the second and fourth Wednesdays of each month at 11:00 a.m. or following any scheduled

hearing on that date.

(c) Central Puget Sound board - on the first Monday of each month at 10:00 am or following any scheduled hearing on that date.

(2) The joint boards shall meet annually at a time and location to be announced.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-074, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-074, filed 10/15/92, effective 10/15/92.]

WAC 242-02-076 Annual and semiannual joint boards meetings. (1) The annual joint boards meeting will be held on the first Thursday and first Friday of October of each year.

(a) In odd-numbered years the annual joint boards meeting will be held within the Central Puget Sound board's region.

(b) In even-numbered years the annual joint boards meeting will be held within the Eastern Washington board's region.

(c) The location, time and agenda for the annual joint boards meeting will be posted on the boards' web site (www.gmhb.wa.gov) in September of each year.

(2) The semiannual joint boards meeting will be held on the last Thursday in April each year.

(a) Each year the semiannual joint boards meeting will be held within the Western Washington board's region.

(b) The location, time and agenda for the semiannual joint boards meeting will be posted on the boards' web site (www.gmhb.wa.gov) in March of each year.

[Statutory Authority: RCW 36.70A.270(7). 03-15-047, § 242-02-076, filed 7/11/03, effective 8/11/03.]

WAC 242-02-080 Form and size of documents. Documents other than exhibits shall be typewritten or printed, properly captioned, signed by the appropriate person submitting the same, shall include his/her address and telephone number, and shall be on 8-1/2 x 11 inch paper. Each board uses IBM compatible software. A board may request submission of a disk from a party, if appropriate.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-080, filed 10/15/92, effective 10/15/92.]

WAC 242-02-090 Case numbering. Each board shall assign a

WAC (3/7/06 7:55 PM) [10]

case number to each petition for review which shall be the official reference number for purposes of identification. The first two digits of the case number shall correspond to the last two digits of the calendar year in which the petition was filed. The third digit shall designate which board has jurisdiction over the matter. The Eastern Washington board shall use the digit "1"; the Western Washington board shall use the digit "2"; and the Central Puget Sound board shall use the digit "3." The last four digits shall be numbered sequentially in order of receipt.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-090, filed 10/15/92, effective 10/15/92.]

PRACTICE BEFORE A BOARD

WAC 242-02-110 Appearance and practice before a board--Who may appear. Practice before a board shall be open to the following persons who have met the standing requirements of chapter 36.70A RCW:

- (1) A party or participant to a case before the board may appear personally or, by a duly authorized representative;
- (2) Attorneys at law practicing before the board must be duly qualified and entitled to practice in the courts of the state of Washington; and
- (3) Other persons permitted by law.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-110, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-110, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-110, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-110, filed 10/15/92, effective 10/15/92.]

WAC 242-02-115 Authorized representatives. (1) Notice of appearance. Any person acting in a representative capacity on behalf of a party or participant shall file a notice of appearance with the board and shall serve a copy on all parties. This requirement shall apply to attorneys as well as to other duly authorized representatives of parties.

(2) Substitution. In the event of a change in representative or attorney, a notice of substitution must be filed with the board and a copy served on all parties before the change in representative shall become effective.

WAC 242-02-120 Rules of professional conduct. All persons appearing in proceedings before a board in a representative
WAC (3/7/06 7:55 PM) [11]

capacity shall conform to the rules of professional conduct required of attorneys before the courts of Washington. If any such person does not conform to such rules, the board may decline to permit such person to appear in a representative capacity in any current or future proceeding before that board or impose other appropriate sanctions.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-120, filed 10/15/92, effective 10/15/92.]

WAC 242-02-130 Ex parte communication. No one in a board proceeding shall make or attempt to make any improper ex parte communications with board members, hearing examiners, or presiding officers, regarding any issue in the proceeding that is prohibited by the Administrative Procedure Act, RCW 34.05.455. Communications on purely procedural matters such as scheduling and logistics are permitted on an ex parte basis. Attempts by anyone to make prohibited ex parte communications shall subject such person to the provisions of WAC 242-02-120 and 242-02-720.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-130, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-130, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-130, filed 10/15/92, effective 10/15/92.]

WAC 242-02-140 Signing of pleadings, motions, and legal memoranda. Every pleading, motion and legal memorandum of a party shall be dated and signed by the party, or the party's attorney or other authorized representative and include an address and telephone and fax numbers.

[Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-140, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-140, filed 10/15/92, effective 10/15/92.]

WAC 242-02-150 Teleconference proceeding. (1) At the discretion of a board or a presiding officer, or where the parties agree and where the rights of the parties will not be prejudiced, all or part of any hearing, prehearing, or motion hearing may be conducted by telephone, television, or other electronic means. Each party in the proceeding must have an opportunity to participate effectively in, to hear, and if

technically and economically feasible, to see the entire proceeding while it is taking place.

(2) The board may require documentary evidence, motions, and briefs to be submitted sufficiently in advance of the teleconference proceeding to insure fair consideration and presentation of the issues. All such material shall also be served on other parties at the time of filing with a board.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-150, filed 10/15/92, effective 10/15/92.]

APPEAL PROCEDURE

WAC 242-02-210 Petition for review--Forms--Contents. A petition for review shall substantially contain:

(1) A caption in the following form:

BEFORE THE . . . GROWTH MANAGEMENT
HEARINGS BOARD
STATE OF WASHINGTON

Petitioner,

Case No.

v.

PETITION FOR REVIEW

Respondent.

(2) Numbered paragraphs stating:

(a) Petitioner's name, mailing address and telephone number and those of the attorney or other authorized representative, if any;

(b) Date of the challenged order, determination, publication, or other action or, in the case of an alleged failure to act, the date by which the action was required to be taken;

(c) A detailed statement of the issues presented for resolution by the board that specifies the provision of the act or other statute allegedly being violated and, if applicable, the provision of the document that is being appealed;

(d) A statement specifying the type and the basis of the petitioner's standing before the board pursuant to RCW 36.70A.280(2);

(e) The estimated length of the hearing;

(f) The relief sought, including the specific nature and extent;

(g) A statement that the petitioner has read the petition for review and believes the contents to be true, followed by the

petitioner's signature or signature of the attorney(s) or other authorized representative(s), if any.

(3) One copy of the applicable provisions of the document being appealed, if any, shall be attached to the petition for review. Petitioner shall provide the board with a copy of the entire document being appealed within 30 days of filing a petition for review.

[Statutory Authority: RCW 36.70A.270(7). 04-21-046, § 242-02-210, filed 10/15/04, effective 11/15/04; 97-04-008, § 242-02-210, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-210, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-210, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-210, filed 10/15/92, effective 10/15/92.]

WAC 242-02-220 Petition for review--Time for filing. (1)

A petition relating to whether or not an adopted comprehensive plan, development regulation, shoreline master program or subsequent amendments, is in compliance with the goals and requirements of the act or chapter 90.58 or 43.21C RCW shall be filed with a board within sixty days from the date of publication by the legislative body of the county or city as specified by RCW 36.70A.290(2).

(2) A petition relating to an adopted county-wide planning policy shall be filed within sixty days of its adoption as specified in RCW 36.70A.210(6).

(3) A petition alleging that the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted can be filed at any time.

(4) For all other matters, a petition must be filed with a board within sixty days of the final written decision, order, determination, publication, or action being entered.

(5) A petition relating to the failure of a state agency, city or county to take an action by a deadline specified in the act may be brought at any time after the deadline for action has passed.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-220, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-220, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-220, filed 3/9/94, effective 4/9/94; 93-11-068, § 242-02-220, filed 5/17/93, effective 6/17/93; 92-21-034, § 242-02-220, filed 10/15/92, effective 10/15/92.]

WAC 242-02-230 Petition for review--Service and filing.

(1) The original and four copies of the petition for review shall be filed with a board personally, or by first class, certified, or registered mail. Filings may also be made with a board by electronic telefacsimile transmission as provided in WAC 242-02-240. A copy of the petition for review shall be personally served upon all other named parties or deposited in the mail and postmarked on or before the date filed with the board. When a county is a party, the county auditor shall be served in noncharter counties and the agent designated by the legislative authority in charter counties. The mayor, city manager, or city clerk shall be served when a city is a party. When the state of Washington is a party, the office of the attorney general shall be served at its main office in Olympia unless service upon the state is otherwise provided by law. Proof of service may be filed with the board pursuant to WAC 242-02-340.

(2) A board may dismiss a case for failure to substantially comply with subsection (1) of this section.

[Statutory Authority: RCW 36.70A.270(7). 04-21-046, § 242-02-230, filed 10/15/04, effective 11/15/04. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-230, filed 10/15/92, effective 10/15/92.]

WAC 242-02-240 Date of filing--Facsimile and electronic mail. (1) The date of filing shall be the date of actual receipt by a board at its office. The date stamp placed on the petition shall be presumptive evidence of the date of receipt.

(2) Filing of any documents with a board by electronic mail or telefacsimile transmission is at the risk of the sender and shall not be deemed complete unless the following procedures are strictly observed:

(a) An electronic mail or facsimile document will only be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's facsimile machine or receiving computer shall be presumptive evidence of the date and time of receipt of transmission.

(b) The original document and three copies must be mailed and postmarked or otherwise transmitted to the board on or before the date of sending the facsimile transmission or electronic mail.

(c) Documents over fifteen pages in length may not be filed

by fax without prior approval of the presiding officer.

(3) A fax or electronic mail copy shall constitute an original solely for the purpose of establishing the date a document was filed.

[Statutory Authority: RCW 36.70A.270(7). 04-21-046, § 242-02-240, filed 10/15/04, effective 11/15/04. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-240, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-240, filed 10/15/92, effective 10/15/92.]

WAC 242-02-250 Notice of appearance and answer. (1) The respondent shall file a notice of appearance with the board and serve a copy on the petitioner and all other parties promptly after having been served with a petition for review. The notice of appearance shall be dated, signed and contain the respondent's address, telephone and fax numbers, and e-mail address.

(2) The respondent, at its option, may file an answer to the petition for review. The respondent shall file the original and three copies with the board and serve a copy on the petitioner. Answers shall be filed no later than twenty days from the date of service of the petition for review. Answers shall be verified in the same manner as the petition for review.

[Statutory Authority: RCW 36.70A.270(7). 04-21-046, § 242-02-250, filed 10/15/04, effective 11/15/04; 97-04-008, § 242-02-250, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-250, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-250, filed 10/15/92, effective 10/15/92.]

WAC 242-02-255 Governor certified standing. If the board receives a request for governor certified standing from a petitioner pursuant to RCW 36.70A.280 (2)(c), the board shall immediately forward the petitioner's request to the governor. The board shall indicate the end of the sixty-day time period within which the determination of standing must be made.

[Statutory Authority: RCW 36.70A.270(7). 00-09-094, § 242-02-255, filed 4/19/00, effective 5/20/00.]

WAC 242-02-260 Amendments to petitions for review and answers. (1) A petition for review or answer may be amended as

a matter of right until thirty days after its date of filing.

(2) Thereafter any amendments shall be requested in writing by motion, and will be made only after approval by a board or presiding officer. Amendments shall not be freely granted and may be denied upon a showing by the adverse party of unreasonable and unavoidable hardship, or by a board's finding that granting the same would adversely impact a board's ability to meet the time requirements of RCW 36.70A.300 for issuing a final order. The board may, upon motion of a party or upon its own motion, require a more complete statement of the nature of the claim or defense or any other matter stated in a pleading.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-260, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-260, filed 10/15/92, effective 10/15/92.]

WAC 242-02-270 Intervention. (1) Upon timely motion, any person may request status as an intervenor in a case. The motion shall state the applicant's interests relating to the subject of the action, how disposition of the action may impair that interest, and whether that interest is adequately represented by existing parties.

(2) In determining whether a person qualifies as an intervenor, the presiding officer shall apply any applicable provisions of law and may consider the applicable superior court civil rules (CR) of this state. The granting of intervention must be in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

(3) If the person qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the motion;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The presiding officer shall timely grant or deny each motion and specify conditions, if any.

(5) Pleadings and briefs of an intervenor shall be filed

concurrently with pleadings and briefs of the party whose position the intervenor supports.

[Statutory Authority: RCW 36.70A.270(7). 04-21-046, § 242-02-270, filed 10/15/04, effective 11/15/04; 97-04-008, § 242-02-270, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-270, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-270, filed 10/15/92, effective 10/15/92.]

WAC 242-02-280 Amicus. (1) Any person whose interest may be substantially affected by a proceeding before a board may by motion request status as an amicus in the case.

(2) A motion to file an amicus curiae brief must include a statement of:

(a) Applicant's interest and the person or group applicant represents;

(b) Applicant's familiarity with the issues involved in the matter and with the scope of the argument presented or to be presented by the parties;

(c) Specific issues to which the amicus curiae brief will be directed; and

(d) Applicant's reason for believing that additional argument is necessary on these specific issues. The brief of amicus curiae may be filed with the motion but must be filed no later than the time set for the filing of the brief for the party whose position the amicus supports.

(3) If the person qualifies for amicus, the presiding officer may impose conditions upon the amicus's participation in the proceedings, either at the time that amicus status is granted or at any subsequent time.

[Statutory Authority: RCW 36.70A.270(7). 04-21-046, § 242-02-280, filed 10/15/04, effective 11/15/04. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-280, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-280, filed 10/15/92, effective 10/15/92.]

WAC 242-02-290 Direct review by superior court-- Procedures. RCW 36.70A.295 provides for direct review by superior court of a petition for review filed with a board if:

(1) All parties to the board proceeding agree to direct review by superior court;

(2) The parties file a direct review agreement, signed by all parties, or their designated representatives, with the

appropriate board;

(3) The direct review agreement includes agreement to proper venue; and

(4) The direct review agreement is filed with the appropriate board within ten days after the petition for review is filed, or if multiple petitions have been filed and the board has consolidated the petitions, within ten days after the board serves notice of consolidation.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-290, filed 12/19/97, effective 1/20/98.]

WAC 242-02-292 Direct review by superior court--Agreement of the parties. (1) A direct review agreement of the parties shall contain:

(a) A caption in the following form:

BEFORE THE ... GROWTH MANAGEMENT
HEARINGS BOARD
STATE OF WASHINGTON

Petitioner,	Case No.
v.	
Respondent	Agreement for Direct Review by ... County Superior Court

(b) Numbered paragraphs stating:

(i) Petitioner's name, mailing address and telephone number and those of the attorney or other designated representative, if any;

(ii) Respondent's name, mailing address and telephone number and those of the attorney or other designated representative, if any;

(iii) Intervenor's name, mailing address and telephone number and those of the attorney or other designated representative, if any;

(iv) A statement indicating agreement to seek direct review by superior court of the petition for review filed with the board, citing case name and number as assigned by the board. The statement shall include agreement to proper venue, and may include other terms;

(v) Date the petition for review was filed, or if multiple petitions were filed and consolidated, the date the board served notice of consolidation;

(vi) A statement that all parties have read the agreement for direct review by superior court, and agree to its terms, followed by the signatures of all the parties or the signatures of the attorneys or other designated representatives, if any.

(2) One copy of the filed petition for review, with the
WAC (3/7/06 7:55 PM) [19]

case name, number and date stamp shall be filed with the agreement for direct review by superior court.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-292, filed 12/19/97, effective 1/20/98.]

WAC 242-02-295 Board filing with superior court--
Certificate of agreement. (1) Within ten days of receiving a timely, complete and signed agreement for direct review by superior court, the board shall file a certificate of agreement, signed by the presiding officer or the board, with the designated superior court and serve the parties with copies of the certificate of agreement.

(2) The following documents shall be filed with the certificate of agreement:

- (a) The executed agreement for direct review by superior court;
- (b) The petition for review;
- (c) Any orders entered by the board;
- (d) Any other documents filed with the board regarding the petition for review.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-295, filed 12/19/97, effective 1/20/98.]

SERVICE OF PAPERS

WAC 242-02-310 Service of papers. (1) Parties filing pleadings, briefs, exhibits and other documents or papers with a board shall also serve copies upon all other parties no later than the date upon which they were filed with the board. Parties served shall be those included on the declaration of service list attached to the board's prehearing order, or amended prehearing order.

(2) Service upon a party's attorney or other authorized representative shall be considered valid service for all purposes upon the party represented.

(3) Final decisions of the board shall be served upon the parties and their attorney or representative of record, if any.

[Statutory Authority: RCW 36.70A.270(7). 04-21-046, § 242-02-310, filed 10/15/04, effective 11/15/04; 97-04-008, § 242-02-310, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-310, filed 3/9/94, effective

4/9/94; 92-21-034, § 242-02-310, filed 10/15/92, effective 10/15/92.]

WAC 242-02-320 Method of service. Service of papers, specified in WAC 242-02-310(1), shall be made personally or by first class, registered or certified mail, or by facsimile transmission. The board may be served by e-mail filings, provided that an original and three copies are deposited in the mail and postmarked no later than the same day. Exhibits shall not be served electronically but shall be deemed timely filed if included in the mailed copies.

[Statutory Authority: RCW 36.70A.270(7). 04-21-046, § 242-02-320, filed 10/15/04, effective 11/15/04. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-320, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-320, filed 10/15/92, effective 10/15/92.]

WAC 242-02-330 Service of papers--When complete. (1) Papers required to be filed with a board shall be deemed filed upon actual receipt during office hours at the board's office.

(2) All facsimile transmissions are sent at the risk of the sender and only pursuant to the procedures specified in WAC 242-02-240.

(3) This section shall not extend any applicable time for appeal to a board nor extend the time for providing notice of appeal to any named party.

[Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-330, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-330, filed 10/15/92, effective 10/15/92.]

WAC 242-02-340 Proof of service--Certificate. Where proof of service is required by this chapter, by statute, or upon a board's request, filing the original document with the board and serving copies upon all attorneys or other authorized representatives of record and upon parties not represented together with one of the following documents shall constitute proof of service:

(1) An acknowledgement of service;

(2) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon each party or the party's attorney or other authorized representative of record in the proceeding by delivering a copy thereof in

person to the named individuals;

(3) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all parties of record in the case by:

(a) Mailing a copy, properly addressed with postage prepaid, to each party or that party's attorney or other authorized representative; or

(b) Transmitting a copy by electronic telefacsimile device, and on the same day mailing a copy to each party in the case or that party's attorney, or other authorized representative; or

(c) Depositing a copy, properly addressed with charges prepaid, with a commercial parcel delivery company or courier service.

[Statutory Authority: RCW 36.70A.270(7). 04-21-046, § 242-02-340, filed 10/15/04, effective 11/15/04. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-340, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-340, filed 10/15/92, effective 10/15/92.]

DISCOVERY AND SUBPOENA

WAC 242-02-410 Discovery--Limitation. (1) Discovery shall not be permitted except upon an order of a board or its presiding officer.

(2) Insofar as applicable and not in conflict with this chapter, when discovery has been authorized by a board or presiding officer, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used. Such statutes and rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions.

[Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-410, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-410, filed 10/15/92, effective 10/15/92.]

WAC 242-02-420 Subpoena--Issuance. (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and court rules.

(2) Every subpoena shall identify the party causing its issuance. Subpoenas may be issued by a board or by an attorney of record. The person issuing shall sign the subpoena. Parties desiring subpoenas to be signed by a board shall make a showing

of relevance and reasonable scope of the testimony or evidence sought and shall prepare the subpoenas for issuance, send them to the board's office for signature, and, upon return, shall make arrangements for service.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-420, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-420, filed 10/15/92, effective 10/15/92.]

PROCEDURES PRIOR TO HEARING

WAC 242-02-510 Notice of hearing--Setting of time and place. (1) Within ten days of the filing of a petition for review, unless a petition for review has been removed to superior court, pursuant to WAC 242-02-290 through 242-02-295, a board or presiding officer will schedule a hearing date and notify the parties of the date.

(2) The board or presiding officer will thereafter schedule a place for the hearing.

(3) A written notice of the date and location of the hearing shall be sent to all parties not less than twenty days prior to the hearing date.

(4) The notice shall identify the appeal to be heard, the names of the parties to the appeal and their attorneys or other authorized representatives, if any, and shall specify the time and place of hearing. The notice shall include the information specified in RCW 34.05.434 and if the hearing is to be conducted by teleconference call the notice shall so state.

(5) The notice shall state that if a limited-English-speaking or hearing impaired party or witness needs an interpreter, a qualified interpreter will be appointed and that there will be no cost to the party or witness. The notice shall include a form for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired.

(6) The notice may also include an order fixing the prehearing date and/or deadlines as provided in these rules.

(7) Defects in notice may be waived if the waiver is knowing and voluntary.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-510, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-510, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-510, filed 3/9/94, effective

4/9/94; 92-21-034, § 242-02-510, filed 10/15/92, effective 10/15/92.]

WAC 242-02-515 Consolidation and segregation of issues. To avoid duplication and/or to provide efficient adjudication of issues, the presiding officer or board may coordinate, consolidate, or segregate issues from more than one petition for review for hearing in a proceeding on the merits or a compliance proceeding.

WAC 242-02-520 Record. Within thirty days of service of a petition for review, the respondent shall file with the board and serve a copy on the parties of an index of all material used in taking the action which is the subject of the petition for review. The index shall contain sufficient identifying information to enable unique documents to be distinguished. In addition, the written or tape recorded record of the legislative proceedings where action was taken shall be available to the parties for inspection.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-520, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-520, filed 10/15/92, effective 10/15/92.]

WAC 242-02-52001 Exhibits. (1) Except as otherwise provided in these rules, the evidence in a case shall consist of the exhibits cited in the briefs and attached thereto. A copy of any document cited in a brief shall be served on the opposing party or parties by the time specified by the board or presiding officer and an original and three copies of the exhibits shall be filed with the board.

(2) Respondents may charge for the cost of copies of documents requested by other parties in accordance with RCW 42.17.300, as amended.

[Statutory Authority: RCW 36.70A.270(7). 04-21-046, § 242-02-52001, filed 10/15/04, effective 11/15/04; 97-04-008, § 242-02-52001, filed 1/24/97, effective 3/1/97.]

WAC 242-02-52002 Documentary evidence. (1) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of the Administrative Procedure Act and WAC 242-02-650.

(2) Where applicable, the presiding officer may order:

(a) That all documentary evidence which is to be offered

WAC (3/7/06 7:55 PM) [24]

during the hearing be submitted to the board and to other parties sufficiently in advance to permit study and preparation of cross-examination and rebuttal evidence;

(b) That documentary evidence not submitted as required in (a) of this subsection not be received in evidence in the absence of a clear showing that the offering party had good cause for the failure to produce the evidence sooner, unless it is submitted for impeachment or rebuttal purposes;

(c) That all documents so presented and examined be deemed authentic unless written objection is filed within fourteen days after receipt. A party will be permitted to challenge such authenticity at a later time only upon a clear showing of good cause for failure to have filed such written objection.

(3) The presiding officer may limit the documentary evidence to that identified on a preliminary, stipulated and/or final list of exhibits and/or to those exhibits cited in a brief. A party may submit additional documentary evidence at the time of hearing only upon a showing of good cause.

(4) When only portions of a document are to be relied upon, the offering party shall adequately identify and prepare the pertinent excerpts and shall supply copies of such excerpts to the presiding officer and to the other parties. However, the whole of the original document shall be made available for examination and for use by all parties to the proceeding.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-52002, filed 1/24/97, effective 3/1/97.]

WAC 242-02-521 Designation of presiding officer. A board shall designate the presiding officer for each case at the time it issues its notice of hearing pursuant to WAC 242-02-510. In the event the presiding officer subsequently changes, the board shall promptly notify the parties.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-521, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-521, filed 11/22/94, effective 12/23/94.]

WAC 242-02-522 Presiding officer--Powers and duties. It shall be the duty of the presiding officer to conduct conferences or hearings as directed by a board in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of the act or these rules to:

(1) Inspect the petition for review to determine whether, on its face, compliance with the jurisdictional and standing requirements of the act is shown, and if compliance is not shown, to recommend an action or to refer the issue to the full board for resolution;

(2) Take appropriate action with respect to the qualifications of the parties or the parties' attorney(s) or other authorized representative(s) to appear before a board;

(3) Administer oaths and affirmations if witnesses are permitted to testify;

(4) Issue subpoenas as provided in RCW 34.05.446;

(5) Rule on all procedural matters, objections and motions unless a board determination is required;

(6) Rule on all evidentiary matters including offers of proof;

(7) When applicable, question witnesses called by the parties in an impartial manner as needed to develop any facts deemed necessary to fairly and adequately decide the issue;

(8) Issue orders joining other parties, on motion of any party, when it appears that such other parties may have an interest in, or may be affected by the case;

(9) Consolidate cases for hearing when such consolidation will expedite disposition and avoid duplication of testimony and when consolidation will not unduly prejudice the rights of any party;

(10) Hold conferences for the settlement or amplification of the issues;

(11) Regulate the course of the case;

(12) Encourage the parties to stipulate to the admissibility of documents in advance of a hearing and to rule on issues concerning the content of the record;

(13) Limit the length of a brief or impose format restrictions;

(14) Sign and file certificates of agreement acknowledging receipt of timely, complete, executed agreements for direct review by superior court;

(15) Rule on requests for settlement extensions;

(16) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

(17) Take any other action necessary and authorized by these rules, the act, or the Administrative Procedure Act, chapter 34.05 RCW.

[Statutory Authority: RCW 36.70A.270(7). 00-09-094, § 242-02-522, filed 4/19/00, effective 5/20/00; 98-01-144, § 242-02-522, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-522, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW

36.70A.270(6). 94-07-033, § 242-02-522, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-522, filed 10/15/92, effective 10/15/92.]

WAC 242-02-530 Motions--Requirements. (1) A motion is an application for an order or ruling. Every motion shall be in writing, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought. An original and three copies of the motion shall be filed with a board and a copy served on each opposing party or that party's attorney or other authorized representative.

(2) All motions shall be properly captioned and signed by the moving party or that party's attorney or other authorized representative.

(3) The motion shall specify the amount of time required for argument, whether appearance by telecommunication is requested, and the names and telephone numbers of all parties served with the motion.

(4) Dispositive motions on a limited record, similar to a motion for summary judgment in superior court or a motion on the merits in the appellate courts, are permitted. Time frames for making and responding to such a motion shall be established by the presiding officer.

(5) Motions to disqualify a hearing examiner acting as the presiding officer, or a board member, for bias, prejudice, interest or other cause, with supporting affidavit(s), may be filed with a board.

(6) Any party may bring a motion for the board to decide a challenge to compliance with the public participation requirements of the Act raised in the petition for review, provided that the evidence relevant to the challenge is limited. If such a motion is timely brought, the presiding officer or the board shall determine whether to decide the public participation issue(s) on motion or whether to continue those issues to the hearing on the merits.

[Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-530, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-530, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-530, filed 10/15/92, effective 10/15/92.]

WAC 242-02-532 Motions--Time for filing and hearing. (1) A motion can be filed at any time unless otherwise specified in these rules or by a board or presiding officer.

(2) After prehearing or other order. If a prehearing order or other order has been entered establishing a deadline for

filing motions, no written motion may be filed after the date specified in the order without written permission of the board or presiding officer.

(3) A board or presiding officer, after taking into consideration when the motion was received and the complexity of the issues raised, may, in its discretion, schedule a hearing for argument of a motion at the time of a prehearing conference or at a separate hearing time, or may defer consideration of the motion until commencement of the hearing on the petition for review. A board or presiding officer may also limit argument on a motion to briefs.

(4) A motion, other than a dispositive motion or a motion to supplement the record, is deemed denied unless the board takes action within twenty days of filing of the motion.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-532, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-532, filed 10/15/92, effective 10/15/92.]

WAC 242-02-533 Motion to disqualify for cause. (1) A motion to disqualify a board member or hearing examiner acting as the presiding officer, for any reason provided under chapter 34.05 RCW, with supporting affidavit(s), must be filed at least seven days before the board holds a prehearing conference, or if facts establishing grounds for disqualification are subsequently discovered, promptly after discovery of such facts.

(2) The board shall promptly rule upon such a motion.

(3) If a motion for disqualification is granted and a presiding officer was disqualified as a result, the board shall promptly designate a new presiding officer.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-533, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-533, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-533, filed 11/22/94, effective 12/23/94.]

WAC 242-02-534 Response to motions. (1) A party served with a motion shall have ten days from the date of receipt of the motion to respond to it, unless otherwise directed by the presiding officer. A response to the motion shall be filed with a board and a copy served on the opposing party/parties.

(2) The response shall specify the amount of time required for argument, whether appearance by telecommunication is

requested, and the names and telephone numbers of all parties served with the response.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-534, filed 10/15/92, effective 10/15/92.]

WAC 242-02-540 New or supplemental evidence. Generally, a board will review only the record developed by the city, county, or state in taking the action that is the subject of review by the board. A party by motion may request that a board allow such additional evidence as would be necessary or of substantial assistance to the board in reaching its decision, and shall state its reasons. A board may order, at any time, that new or supplemental evidence be provided.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-540, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-540, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-540, filed 10/15/92, effective 10/15/92.]

WAC 242-02-550 Prehearing conference. A prehearing conference is optional at the discretion of the presiding officer. The purpose of a prehearing conference is to:

(1) Determine the feasibility of and encourage settlement of the matter or any portion thereof;

(2) Obtain a stipulation of relevant facts including a board's jurisdiction and the party's standing in the matter;

(3) Obtain agreement as to the issues of law and fact presented and their simplification, limitation, or resolution;

(4) Determine the qualifications of expert witnesses, if they are permitted to testify;

(5) Receive any motions concerning qualification of individual board members to hear the matter;

(6) Obtain information as to the number of expert and/or lay witnesses expected to be called by the parties and their names, addresses and telephone numbers;

(7) Set subsequent deadlines, if and when appropriate, for filing final exhibit and witness lists, filing motions, and completing discovery; establish a briefing schedule, limit the length of briefs; and decide other matters related to the conduct of the hearing;

(8) Determine the approximate time necessary for the presentation of evidence and/or argument of the respective parties; and

(9) Obtain all other information which may aid in the prompt disposition of the matter.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-550, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-550, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-550, filed 10/15/92, effective 10/15/92.]

WAC 242-02-552 Prehearing conference--When held. (1) A board or presiding officer may order a prehearing conference on not less than seven days notice mailed to each party at a time and place fixed by a board or presiding officer.

(2) At any time prior to a hearing on a petition for review, any party may file a written application with a board requesting a prehearing conference.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-552, filed 10/15/92, effective 10/15/92.]

WAC 242-02-556 Prehearing conference--Failure to supply information. If any party fails to supply the information reasonably necessary and required at the time of the prehearing conference, or as directed in a prehearing order, a board or presiding officer may subsequently limit the receipt of such party's evidence.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-556, filed 10/15/92, effective 10/15/92.]

WAC 242-02-558 Prehearing conference--Agreements. At the conclusion of a prehearing conference, the presiding officer may require the parties to submit a proposed prehearing order. The presiding officer will issue an order reciting the action taken at the conference and any agreements of the parties or decisions of the presiding officer. The order may include provisions pertaining to:

- (1) Jurisdiction and standing;
- (2) Issues;
- (3) Admissions;
- (4) Witnesses, if permitted;
- (5) Time, location and length of hearings;
- (6) Authenticity and/or admissibility of exhibits;
- (7) Qualification of witnesses, if permitted;

(8) Rulings of the board prior to the prehearing conference;

(9) Rulings of the presiding officer; and

(10) Any other matters that may expedite the hearing. Any objection to such order shall be made in writing within seven days after the date the order is dated. A board shall serve its prehearing order on the same day that the order is dated. The order shall control ensuing proceedings unless modified for good cause by a subsequent order.

[Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-558, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-558, filed 10/15/92, effective 10/15/92.]

WAC 242-02-560 Settlement extensions--Continuances. (1)

If additional time is necessary to achieve settlement of a dispute that is an issue in a petition before a board, a board may extend the one hundred eighty-day time limit for issuing a final decision and order, as provided in RCW 36.70A.300 (2)(b). A board may authorize one, or more, extensions of up to ninety days each.

(2) A request for a settlement extension must be filed with a board not later than seven days before the date scheduled for the hearing on the merits of the petition.

(3) A board may grant a request for a settlement extension if:

(a) The request was timely filed; and

(b)(i) All parties named in the caption of the petition, agree to and sign the request; or

(ii) A petitioner and respondent agree to and sign the request and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute.

(4) Continuances of hearings will be granted only on a board's initiative or upon timely request of a party setting forth in detail the reasons for such a request and a date by which such reason will no longer apply. The board will continue the matter only upon a finding of good cause and in order to prevent manifest injustice.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-560, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-560, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-560, filed 10/15/92, effective 10/15/92.]

WAC 242-02-570 Briefs. (1) A petitioner, or a moving party when a motion has been filed, shall submit a brief on each legal issue it expects a board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

(2) The original and three copies of briefs and exhibits not previously filed with the board in the pending case and that are cited in the brief shall be filed with a board at least five business days prior to the hearing unless otherwise provided by a board or presiding officer. When briefs and exhibits are filed, a copy shall also be served on each party, unless otherwise directed by a board or presiding officer. A board or presiding officer may permit or require the filing of additional briefs.

(3) Clarity and brevity are expected to assist a board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-570, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-570, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-570, filed 10/15/92, effective 10/15/92.]

WAC 242-02-580 Stipulation to the facts. Parties are encouraged to stipulate to any undisputed facts.

[Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-580, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-580, filed 10/15/92, effective 10/15/92.]

WAC 242-02-582 Waiver of parties' appearance. Upon stipulation by all parties, or upon order of the board, a matter may be submitted to a board or presiding officer without oral argument or appearance. The board or presiding officer, in its discretion, may require appearance for oral argument.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-582, filed 10/15/92, effective 10/15/92.]

HEARING PROCEDURE

WAC 242-02-610 Hearing--Testimony under oath--Interpreters. (1) All testimony to be considered by a board or presiding officer shall be sworn, and each person shall swear or affirm that the testimony to be given shall be the truth, the whole truth, and nothing but the truth, or according to the provisions of RCW 5.28.020 through 5.28.060.

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the presiding officer, in the English language, to the best of the interpreter's skill and judgment.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-610, filed 10/15/92, effective 10/15/92.]

WAC 242-02-612 Hearing--Interpreters. The provisions of WAC 10-08-150 are incorporated by reference herein.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-612, filed 10/15/92, effective 10/15/92.]

WAC 242-02-620 Hearing--Reporting--Recording--Recording devices. (1) All hearings shall be officially recorded by manual, electronic, or other type of recording device.

(2) Photographic and recording equipment of others shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or common law limits such use.

[Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-620, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-620, filed 10/15/92, effective 10/15/92.]

WAC 242-02-630 Presumption of validity. Comprehensive plans and development regulations and any subsequent amendments adopted under the act are presumed valid upon adoption.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-630, filed 10/15/92, effective 10/15/92.]

WAC 242-02-632 Burden of proof. (1) Except as provided in subsection (2) of this section, the burden of proof shall be on the petitioner to show that respondent's action or failure to act is not in compliance with the requirements of the act.

(2) A county or city subject to a determination of invalidity made under RCW 36.70A.302 has the burden of demonstrating that the legislation it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the act.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-632, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-632, filed 10/15/92, effective 10/15/92.]

WAC 242-02-634 Standard of proof. Where a petition for review alleges a lack of compliance with the Growth Management Act, a board shall find compliance unless it determines that the action by the state agency, county or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the act.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-634, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-634, filed 10/15/92, effective 10/15/92.]

WAC 242-02-640 Hearing--Procedures at hearing. (1) Presiding officer. All hearings shall be conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections, and motions.

(2) Order of presentation. The presiding officer shall determine the proper order of presentation.

(3) Opening statements. Unless the presiding officer rules otherwise, parties may present oral opening statements setting out briefly a statement of the basic facts and issues of the case.

(4) Objections. Objection to the admission or exclusion of evidence shall state briefly the legal ground of objection.

(5) Rulings. The presiding officer, on objection or on his/her own motion, shall exclude all irrelevant or unduly repetitious evidence. All rulings upon objections to the admissibility of evidence shall be made in accordance with WAC

242-02-650.

(6) Time. The presiding officer, after consultation with the parties, shall determine the time allotted for presentation.

(7) New evidence submitted at hearing. The board may allow the submission of new evidence at a hearing in response to board questions, upon a showing that the new evidence is necessary or of substantial assistance to the board. If new evidence is thereby introduced, the opposing party shall have the opportunity to respond. The board may require the parties to submit post-hearing documents detailing the new evidence, and the opposing party's rebuttal to the new evidence.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-640, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-640, filed 10/15/92, effective 10/15/92.]

WAC 242-02-650 Rules of evidence--Admissibility criteria.

(1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the presiding officer, the offered evidence is the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) A board's experience, technical knowledge, competency, and specialized knowledge may be used in evaluation of evidence.

(3) If not inconsistent with subsection (1) of this section, the presiding officer shall refer to, but shall not be bound by, the Washington rules of evidence.

(4) Documentary evidence may be submitted in the form of copies or excerpts, or by incorporation by reference.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-650, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-650, filed 10/15/92, effective 10/15/92.]

WAC 242-02-660 Official notice--Matters of law. A board or presiding officer may officially notice:

(1) Federal law. The Constitution; congressional acts, resolutions, records, journals, and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders, and notices published in the Federal Register.

(2) Washington state law. The Constitution of the state of Washington; decisions of the state courts; acts, resolutions, records, journals, and committee reports of the legislature; decisions of administrative agencies of the state of Washington; executive orders and proclamations by the governor; all rules, orders, and notices filed with the code reviser; and codes or standards that have been adopted by an agency of this state or by a nationally recognized organization or association.

(3) Laws of other states. The constitutions of other states; decisions of state courts; acts, resolutions, records, journals and committee reports of other state legislatures; decisions of other states administrative agencies; executive orders and proclamations issued by a governor of another state; and codes or standards that have been adopted by an agency of another state.

(4) Counties and cities. Ordinances, resolutions, and motions enacted by cities, counties, or other municipal subdivisions of the state of Washington.

(5) Federally recognized Indian tribes, Constitutions, ordinances, resolutions and motions enacted by federally recognized Indian tribes.

(6) Growth management hearings boards. Orders and decisions of any board.

(7) Joint boards. Rules of practice and procedure.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-660, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-660, filed 11/22/94, effective 12/23/94; 92-21-034, § 242-02-660, filed 10/15/92, effective 10/15/92.]

WAC 242-02-670 Official notice--Material facts. In the absence of conflicting evidence, a board or presiding officer, upon request made before or during a hearing, may officially notice:

(1) Business customs. General customs and practices followed in the transaction of business.

(2) Notorious facts. Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including, but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency.

(3) Technical or scientific facts. Technical or scientific

facts within a board's specialized knowledge.

(4) Request. Any party may request, orally or in writing, that official notice be taken of a material fact. The board or presiding officer may take official notice of a material fact on its own initiative.

(5) Notice. Parties shall be notified either before or during a hearing of the material fact(s) proposed to be officially noticed, and shall be afforded the opportunity to contest such facts and materials.

(6) Statement.

(a) In determining whether to take official notice of material facts, the presiding officer may consult any source of pertinent information, whether or not furnished by any party and whether or not admissible under the rules of evidence.

(b) If official notice of a material fact is taken, it shall be clearly and precisely stated and made part of the record.

(c) Where a decision of a board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-670, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-670, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-670, filed 10/15/92, effective 10/15/92.]

WAC 242-02-680 Hearings--Board questions. A hearing examiner or any member of a board may, at any time during the hearing, ask clarifying questions as necessary to understand the evidence or argument.

[Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-680, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-680, filed 10/15/92, effective 10/15/92.]

DISPOSITION OF CASES PRIOR TO HEARING

WAC 242-02-710 Failure to attend--Default or dismissal--Setting aside. (1) When a party to a proceeding has, after proper notice, failed to attend a hearing or any other matter before a board or presiding officer, a motion for default or dismissal may be sought by any party to the case or raised by a board upon its own motion or by a presiding officer. Any order

granting the motion shall include a statement of the grounds for the order and shall be served upon all parties to the case.

(2) Within seven days after service of the default order or dismissal under subsection (1) of this section, the party against whom the order was entered may file a written objection requesting that the order be vacated and stating the specific grounds relied upon. The board may, for good cause, set aside an order of dismissal or default.

[Statutory Authority: RCW 36.70A.270(7). 97-04-008, § 242-02-710, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-710, filed 10/15/92, effective 10/15/92.]

WAC 242-02-720 Dismissal of action. Any action may be dismissed by a board:

- (1) When all parties stipulate;
- (2) Upon motion of the petitioner or respondent prior to the presentation of the respondent's case;
- (3) Upon motion by the respondent alleging that the petitioner has failed to prosecute the case, failed to comply with these rules, or failed to follow any order of the board; or
- (4) Upon a board's own motion for failure by the parties to comply with these rules or any order of the board.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-720, filed 10/15/92, effective 10/15/92.]

DISPOSITION OF PETITIONS FOR REVIEW AFTER HEARING

WAC 242-02-810 Presentation of post hearing matters. Unless requested by or authorized by a board, no post hearing evidence, documents, briefs, or motions will be accepted. A board may request submission of proposed findings of fact, conclusions of law, and final order from any or all parties.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-810, filed 10/15/92, effective 10/15/92.]

WAC 242-02-830 Final decision and order--Basis. (1) When the hearing on the petition for review has been held and the record reviewed by a majority of a board, a written final decision and order shall be issued that contains appropriate

WAC (3/7/06 7:55 PM) [38]

findings and conclusions, and articulates the basis for the final decision and order.

(2) The board will not issue advisory opinions on issues not presented to the board in the petition for review's statement of the issues, as modified by any prehearing order.

(3) Except as provided in RCW 36.70A.300 (2)(b) and WAC 242-02-560, the final decision and order shall be issued by a board within one hundred eighty days of receipt of the petition for review, or if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-830, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-830, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-830, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-830, filed 10/15/92, effective 10/15/92.]

WAC 242-02-831 Final decision and order--Compliance, noncompliance, invalidity. (1) In its final decision and order, a board shall either:

(a) Find that the state agency, county or city is in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county or city is not in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand the matter to the state agency, county or city and specify a time for compliance. The period of remand shall extend to the date the board issues its next order on compliance.

(2) In its final decision and order, a board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand;

(b) Includes in its final decision and order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or

regulation would substantially interfere with the fulfillment of the goals of the act; and

(c) Specifies the part or parts, if applicable, of the plan or regulation that are determined to be invalid and the reasons for invalidity.

(3) The effect of a determination of invalidity is as set forth in RCW 36.70A.302.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-831, filed 12/19/97, effective 1/20/98.]

WAC 242-02-832 Reconsideration. (1) After issuance of a final decision any party may file a motion for reconsideration with a board in accordance with subsection (2) of this section. Such motion must be filed within ten days of service of the final decision. The original and three copies of the motion for reconsideration shall be filed with the board. At the same time, copies shall be served on all parties of record. Within five days of filing the motion for reconsideration, a party may file an answer to the motion for reconsideration without direction or request from the board. A board may require other parties to supply an answer. All answers to motions for reconsideration shall be served on all parties of record.

(2) A motion for reconsideration shall be based on at least one of the following grounds:

(a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;

(b) Irregularity in the hearing before the board by which such party was prevented from having a fair hearing; or

(c) Clerical mistakes in the final decision and order.

(3) In response to a motion for reconsideration, the board may deny the motion, modify its decision, or reopen the hearing. A motion is deemed denied unless the board takes action within twenty days of filing the motion for reconsideration. A board order on a motion for reconsideration is not subject to a motion for reconsideration.

(4) A decision in response to the petition for reconsideration shall constitute a final decision and order for purposes of judicial review. Copies of the final decision and order shall be served by the board on each party or the party's attorney or other authorized representative of record.

[Statutory Authority: RCW 36.70A.270(7). 00-09-094, § 242-02-832, filed 4/19/00, effective 5/20/00; 98-01-144, § 242-02-832, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-832, filed 1/24/97, effective 3/1/97.]

WAC 242-02-833 Invalidity--Hearing pursuant to motion to clarify, modify or rescind. If a motion to clarify, modify or rescind a determination of invalidity order has been filed by a county or city subject to a determination of invalidity, pursuant to RCW 36.70A.302, and the jurisdiction has not enacted legislation in response to the board's remand order, a board shall schedule and conduct a hearing to address clarifying, modifying or rescinding the determination of invalidity. Within thirty days of the hearing the board shall continue, clarify, modify, or rescind the determination of invalidity. The board may rescind a determination of invalidity but find continuing noncompliance, in which case the board may establish a compliance schedule or new compliance date.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-833, filed 12/19/97, effective 1/20/98.]

WAC 242-02-834 Publication of final decision and orders. Copies of all final decisions and orders are available from the board that entered the decision and order. The growth management hearings board web site is www.gmhb.wa.gov. Each board posts its decisions within its individual portion of the web site and maintains a digest of its decisions.

[Statutory Authority: RCW 36.70A.270(7). 03-15-047, § 242-02-834, filed 7/11/03, effective 8/11/03; 00-09-094, § 242-02-834, filed 4/19/00, effective 5/20/00; 97-04-008, § 242-02-834, filed 1/24/97, effective 3/1/97.]

WAC 242-02-880 Transcripts. The following shall be the policy of each board with regard to transcription of the record:

(1) A board, in its discretion, may at any time cause a transcript to be printed. Any person may obtain a copy upon payment of the reasonable costs thereof.

(2) In any case when a board shall not cause the transcript to be printed, it shall be the obligation of the party wishing a transcript, or portions of it, to assume the cost of producing it.

(3) When an appeal is taken from any final decision and order of a board to a reviewing court, the appealing party is responsible for ordering and paying for the transcript of the hearing.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-880, filed 12/19/97, effective 1/20/98; 97-04-008, § 242-02-880, filed 1/24/97, effective 3/1/97. Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-880, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-880, filed 10/15/92, effective 10/15/92.]

WAC 242-02-890 Determination of noncompliance--Compliance schedule. In those cases where a board finds that a state agency, county, or city is not in compliance with the requirements of the act, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, the board shall remand the matter to the affected state agency, county, or city. The board's final decision and order shall specify a reasonable time not in excess of one hundred eighty days, or such longer time as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply. In its order the board shall establish a compliance schedule and may require periodic reports on the progress the jurisdiction is making toward compliance.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-890, filed 12/19/97, effective 1/20/98. Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-890, filed 11/22/94, effective 12/23/94; 92-21-034, § 242-02-890, filed 10/15/92, effective 10/15/92.]

WAC 242-02-891 Compliance--Notice of hearing. (1) After the compliance deadline specified in the final decision and order passes, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.302, a board shall issue a notice of compliance hearing setting a hearing date for the purpose of determining whether compliance has been achieved. The compliance hearing shall be given the highest priority of business.

(2) The presiding officer shall set the format of the compliance hearing in the notice of compliance hearing. At the compliance hearing the presumption of validity and burden of proof are as set forth in WAC 242-02-630 and 242-02-632. The parties to the original case, and a person with standing to challenge the legislation enacted in response to a board's final

decision and order, may participate in the compliance hearing. The notice of compliance hearing shall set the scope of, and procedures for participation.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-891, filed 12/19/97, effective 1/20/98.]

WAC 242-02-892 Intent to participate in compliance hearings.

Any person eligible to participate in a compliance proceeding based upon his or her participation in the proceedings to enact legislation in response to a board order shall abide by any briefing schedule set in the board's compliance order, as amended or extended, and provide the board with written notice of intent to participate no later than two weeks prior to the compliance hearing date set in that order.

WAC 242-02-893 Compliance--Hearing. (1) Upon a motion of a party or participant, the board shall reconsider its final decision and order and decide, if no determination of invalidity had previously been made, whether one should now be made. The procedures at the compliance hearing shall be as set forth by the presiding officer, pursuant to WAC 242-02-891. After a compliance hearing, the board shall determine whether a state agency, county or city is in compliance with the requirements of the act as remanded in the final decision or order and any compliance schedule established by the board.

(2) The evidence in a compliance hearing shall consist of the exhibits cited in the briefs submitted in the compliance proceeding and either attached to the briefs or specifically identified as exhibits submitted and attached to prior briefs filed in the same case number.

[Statutory Authority: RCW 36.70A.270(7). 04-21-046, § 242-02-893, filed 10/15/04, effective 11/15/04; 98-01-144, § 242-02-893, filed 12/19/97, effective 1/20/98.]

WAC 242-02-894 Compliance--Hearing pursuant to motion--Rescinding invalidity. If a motion for a compliance hearing has been filed by a county or city subject to a determination of invalidity, pursuant to RCW 36.70A.330(1), and the jurisdiction has enacted legislation amending the invalidated plan, regulation or part thereof, a board shall schedule and conduct a hearing to address rescinding the determination of invalidity. Within forty-five days of the filing of the motion the board shall issue an order continuing, modifying, or rescinding the determination of invalidity depending upon whether the jurisdiction's legislative action has removed the basis for

invalidity so that it no longer substantially interferes with the goals of the act. The board may rescind a determination of invalidity but find continuing noncompliance, in which case the board may establish a compliance schedule or new compliance date.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-894, filed 12/19/97, effective 1/20/98.]

WAC 242-02-896 Continued noncompliance--Recommendation to the governor. If the board finds that the county or city continues to be in noncompliance with the act, the board shall transmit its findings to the governor. A board may recommend that sanctions authorized by the act be imposed. A jurisdiction's efforts to meet a compliance schedule shall be considered by the board in making a recommendation on sanctions to the governor.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-896, filed 12/19/97, effective 1/20/98.]

WAC 242-02-898 Appeals of a board's final decision. (1) Any party aggrieved by a final decision of a board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of service of the final decision of the board.

(2) A board shall follow the procedures established in RCW 34.05.518 in the event that direct appellate review is sought.

WAC 242-02-899 Record on review The party seeking review should, within 30 days after the notice of appeal is filed, serve on all other parties and file with the board a designation of those exhibits that the party wants the board to transmit to the superior court. Each party is encouraged to designate only those exhibits needed to review the issues presented to the superior court.

[Statutory Authority: RCW 36.70A.270(7). 98-01-144, § 242-02-898, filed 12/19/97, effective 1/20/98.]

WAC 242-02-910 Petitions for declaratory ruling. (1) Any person may petition a board for a declaratory ruling about the applicability to specific circumstances of a rule, order, or statute within a board's jurisdiction. The petition shall set

WAC (3/7/06 7:55 PM) [44]

forth facts and reasons on which the petition relies to show:

- (a) That uncertainty necessitating resolution exists;
 - (b) That there is actual controversy arising from the uncertainty such that a declaratory ruling will not be merely an advisory opinion;
 - (c) That the uncertainty adversely affects the petitioner;
 - (d) That the adverse effect of uncertainty outweighs any adverse effects on others or on the general public that may likely arise from the order requested; and
 - (e) That the petition complies with any additional requirements established by the board.
- (2) Form of the petition. The form of the petition for declaratory ruling shall generally adhere to the following:
- (a) A caption in the following form:

BEFORE THE GROWTH MANAGEMENT
HEARINGS BOARD
STATE OF WASHINGTON

No.

In the matter of
the Petition of
(name of Petitioner)
for a Declaratory
Ruling

PETITION FOR
DECLARATORY RULING

(b) The body of the petition shall be set out in numbered paragraphs. The first paragraph shall state the name and address of the petitioning party. The second paragraph shall state all rules or statutes that may be brought into issue by the petition. Succeeding paragraphs shall set out the state of facts relied upon in form similar to that applicable to complaints in civil actions before superior courts of this state. The concluding paragraphs shall contain the relief requested. The petition shall be subscribed and verified in the manner prescribed for certification of petitions in these rules.

(c) The original and three copies shall be filed with the board.

(3) Consideration of petition. A board shall consider the petition and within thirty days of its filing shall:

- (a) Issue a nonbinding declaratory ruling;
- (b) Notify the petitioner that no declaratory ruling is to be issued; or
- (c) Set a time and place for a hearing or for submission of written evidence on the matter, which shall occur within ninety days of the receipt of the petition, and give at least seven days notification to the petitioner of the time and place for such hearing or submission and of the issues involved.

(4) Disposition of petition. If the hearing is held or evidence is submitted as provided in subsection (3)(c) of this section, a board shall, within a reasonable time:

(a) Issue a binding declaratory ruling; or

(b) Issue a nonbinding declaratory ruling; or

(c) Notify the petitioner that no declaratory ruling is to be issued.

[Statutory Authority: RCW 36.70A.270(6). 94-23-112, § 242-02-910, filed 11/22/94, effective 12/23/94; 94-07-033, § 242-02-910, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-910, filed 10/15/92, effective 10/15/92.]

WAC 242-02-920 Declaratory ruling--Notice to other persons. Within fifteen days after receipt of a petition for declaratory order, a board or presiding officer shall give notice of the petition to all persons to whom notice is required by law, and may give notice to any other person it deems desirable. A board or presiding officer may elect to allow written or oral presentations from other interested persons.

[Statutory Authority: RCW 36.70A.270(6). 94-07-033, § 242-02-920, filed 3/9/94, effective 4/9/94; 92-21-034, § 242-02-920, filed 10/15/92, effective 10/15/92.]

WAC 242-02-930 Declaratory ruling--Disposition of petition. A declaratory ruling entered by a board or a decision by a board to decline to enter a declaratory ruling shall be in writing and shall be served upon the petitioner and all other persons described in RCW 34.05.240(3). A decision issued shall be considered a final decision for purposes of judicial review.

[Statutory Authority: RCW 36.70A.270(6). 92-21-034, § 242-02-930, filed 10/15/92, effective 10/15/92.]